

AMENDED IN ASSEMBLY MAY 15, 1997

AMENDED IN ASSEMBLY MAY 1, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1469

Introduced by Assembly Member Ducheny

February 28, 1997

An act to amend Section 18405 of the Revenue and Taxation Code, *and to amend Section 9 of Chapter 490 of the Statutes of 1995*, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1469, as amended, Ducheny. Bank and corporation taxes: administrative relief.

The Bank and Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, the business income is apportioned between this state and other jurisdictions for tax purposes in accordance with a specified formula based on the property, payroll, and sales of the business within and without this state. That law permits a qualified taxpayer, as defined, to elect to determine its income under a water's-edge election.

Existing law also provides that in the case of a specified new statutory provision, as defined, the Franchise Tax Board itself is authorized to grant relief relating to waiving penalties or perfecting elections, as provided. That law also provides that

relief under these provisions may be granted only for the first taxable or income year for which the new statutory provision is operative and only when substantial unintentional noncompliance with the new provision has occurred by a class of affected taxpayers. Existing law provides that substantial unintentional noncompliance includes any case in which the taxpayer filed a water's-edge contract with a timely filed original return and other specified conditions are met.

This bill would additionally provide that substantial unintentional noncompliance includes specified circumstances in connection with a failure to perfect a water's-edge election by reason of a prior act or omission of an affiliated corporation that was included in a combined return, as specified, and certain circumstances in connection with a failure to perfect a water's-edge election in the 1988 income year to include a water's-edge contract, and would provide relief under those circumstances upon compliance, as specified, on or before December 31, 1997.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 18405 of the Revenue and
2 Taxation Code is amended to read:
3 18405. (a) In the case of a new statutory provision in
4 Part 7.5 (commencing with Section 13201), Part 10
5 (commencing with Section 17001), Part 10.2
6 (commencing with Section 18401), or Part 11
7 (commencing with Section 23001), or the addition of a
8 new part, the Franchise Tax Board itself is authorized to
9 grant relief as set forth in subdivision (b) from the
10 requirements of the new statutory provision in a manner
11 as provided in subdivision (c).
12 (b) The relief provided in subdivision (a) may be
13 granted only for the first taxable or income year for which
14 the new statutory provision is operative and only when
15 substantial unintentional noncompliance with the new
16 provision has occurred by a class of affected taxpayers.



1 The relief is limited to waiving penalties or perfecting
2 elections and may be granted only to taxpayers who
3 timely paid taxes and other required amounts shown on
4 the return consistent with the election and who timely
5 filed their return (with regard to extension).

6 (c) The relief granted in this section shall, upon the
7 recommendation of the executive officer of the Franchise
8 Tax Board, be made by resolution of the Franchise Tax
9 Board which sets forth the conditions, time, and manner
10 as the Franchise Tax Board determines are necessary.
11 The resolution shall be adopted only by an affirmative
12 vote of each of the three members of the Franchise Tax
13 Board.

14 (d) For purposes of this section:

15 (1) “New statutory provision” means a complete,
16 newly established tax program, tax credit, exemption,
17 deduction, exclusion, penalty, or reporting or payment
18 requirement and does not mean amendments made to
19 existing tax provisions that make minor modifications or
20 technical changes.

21 (2) “Perfecting elections” includes correcting
22 omissions or errors only when substantial evidence is
23 present with the filed return that the taxpayer intended
24 to make the election and does not include making an
25 election where one was not previously attempted to be
26 made.

27 (3) “Substantial unintentional noncompliance,” for
28 purposes of Part 11 (commencing with Section 23001),
29 includes ~~either~~ any of the following:

30 (A) Any case in which the taxpayer filed a
31 water’s-edge contract with a timely filed original return
32 and timely paid all taxes and other required amounts
33 shown on the return consistent with the water’s-edge
34 election, but where the taxpayer’s election is or might be
35 invalidated by reason of the act or omission of an affiliated
36 corporation that is not the parent or a subsidiary of the
37 taxpayer. In that case, notwithstanding anything to the
38 contrary in this section, relief shall be deemed granted to
39 validate the taxpayer’s water’s-edge election,
40 conditioned only upon an agreement by the affiliated

1 corporation to either (i) file a water's-edge contract and
2 pay all taxes and other required amounts consistent with
3 that election, or (ii) waive any right, with respect to any
4 income year for which the corporation did not make a
5 water's-edge election on its own timely filed return, to
6 determine its income derived from or attributable to
7 sources within this state pursuant to that election,
8 whichever measure produces the greater amount of tax.

9 ~~(B) (i) Any case in which the taxpayer filed a~~
10 ~~water's-edge contract with a timely filed original~~
11 ~~combined return for itself and its affiliated corporations~~
12 ~~included in its water's-edge group for any part of the year,~~
13 ~~and either of the following occurred:~~

14 ~~(I) The taxpayer timely paid all taxes and other~~
15 ~~required amounts shown on the return consistent with~~
16 ~~the water's-edge election, but the taxpayer's election is or~~
17 ~~might be invalidated by reason of a prior act or omission~~
18 ~~of an affiliated corporation that was included in the~~
19 ~~combined return and that is not the parent or subsidiary~~
20 ~~of the taxpayer.~~

21 ~~(II) The taxpayer filed a timely California 1988 return,~~
22 ~~taking into account any extension, which included~~
23 ~~substantial evidence with the return that the taxpayer~~
24 ~~and all taxpayers of the water's-edge group for any part~~
25 ~~of the 1988 income year intended to make a water's-edge~~
26 ~~election beginning with the 1988 income year, such as~~
27 ~~attaching at least one water's-edge form with the return~~
28 ~~or checking one of the boxes on the return which~~
29 ~~indicates an intention to make the election, and timely~~
30 ~~paid all taxes and other required amounts shown on the~~
31 ~~return consistent with making that election, other than~~
32 ~~the water's-edge election fee, but failed unintentionally~~
33 ~~to perfect the election by not including a water's-edge~~
34 ~~contract with the 1988 income year return. In the case of~~
35 ~~a taxpayer described in the preceding sentence, the~~
36 ~~taxpayer shall file with the Franchise Tax Board the~~
37 ~~water's-edge contract and all other required forms, and~~
38 ~~shall pay all taxes, interest, penalties, and the~~
39 ~~water's-edge election fee to perfect the water's-edge~~
40 ~~election for the 1988 income year, on or before December~~

1 ~~31, 1997, to be eligible for the relief provided by this~~
2 ~~section.~~

3 ~~(ii) In the case of a taxpayer described in clause (i),~~
4 ~~notwithstanding anything to the contrary in this section,~~
5 ~~relief shall be deemed granted to validate the taxpayer's~~
6 ~~water's-edge election for itself and its affiliated~~
7 ~~corporations included in the combined return.~~

8 ~~(iii)~~

9 *(B) Any case in which the taxpayer filed a*
10 *water's-edge contract with a timely filed original*
11 *combined return for itself and its affiliated corporations*
12 *included in its water's-edge group for any part of the year,*
13 *and timely paid all taxes and other required amounts*
14 *shown on the return consistent with the water's-edge*
15 *election, but the taxpayer's election is or might be*
16 *invalidated by reason of a prior act or prior omission of an*
17 *affiliated corporation that was included in the combined*
18 *return and that is not the parent or subsidiary of the*
19 *taxpayer. In that case, notwithstanding anything to the*
20 *contrary in this section, relief shall be deemed granted to*
21 *validate the taxpayer's water's-edge election for itself and*
22 *its affiliated corporations included in the combined*
23 *return.*

24 *(C) (i) Any case in which the taxpayer timely filed an*
25 *original return that included substantial evidence with*
26 *the return that the taxpayer and all affiliated corporations*
27 *included in its water's-edge group for any part of the year*
28 *intended to make a water's-edge election and timely paid*
29 *all taxes and other required amounts shown on the return*
30 *consistent with the water's-edge election, other than the*
31 *water's-edge election fee, but the taxpayer's election is or*
32 *might be invalidated by its failure to include a*
33 *water's-edge contract with the return. For the purpose of*
34 *this clause, "substantial evidence" means attaching at*
35 *least one water's-edge form to the return or checking one*
36 *of the boxes on the return that indicates an intent to make*
37 *a water's-edge election.*

38 *(ii) A taxpayer described in clause (i) shall file with*
39 *the Franchise Tax Board the water's-edge contract and all*
40 *other required forms, and shall pay all taxes, interest,*

1 *penalties, and the water's-edge election fee to perfect the*
2 *water's-edge election, on or before December 31, 1997, to*
3 *be eligible for the relief provided by this section.*

4 *(iii) Notwithstanding any other provision of this*
5 *section to the contrary, relief shall be deemed granted to*
6 *validate the taxpayer's water's-edge election upon the*
7 *fulfillment of the criteria in this subparagraph.*

8 *(iv) This subparagraph shall not apply to any taxpayer*
9 *or any member of the commonly controlled group that*
10 *has previously requested relief under this section and for*
11 *which any water's-edge election was perfected for the*
12 *taxpayer or any member of the commonly controlled*
13 *group as a result of that request.*

14 *(e) This section shall apply to any Franchise Tax Board*
15 *resolution adopted after the effective date of this section*
16 *with respect to any taxable or income year which is*
17 *subject to an open statute of limitations on the date of the*
18 *resolution.*

19 *(f) On or before March 1, 1998, the Franchise Tax*
20 *Board shall report to the Legislature on the utilization of*
21 *this section. The report shall describe the class or classes*
22 *of taxpayers provided relief, the issue involved and the*
23 *number of taxpayers affected, and, where applicable, the*
24 *aggregate amount of penalty relieved for each class of*
25 *taxpayers.*

26 *SEC. 2. Section 9 of Chapter 490 of the Statutes of 1995*
27 *is amended to read:*

28 *SEC. 9. (a) Section 1 of this act shall apply only with*
29 *respect to a taxpayer or an affiliated corporation that*
30 *either (1) requested relief under Section 18405 of the*
31 *Revenue and Taxation Code on or before December 31,*
32 *1994, or (2) is described in clause (i) of subparagraph (C)*
33 *of paragraph (3) of subdivision (d) of Section 18405 of the*
34 *Revenue and Taxation Code.*

35 *(b) For the purpose of this section, a taxpayer or an*
36 *affiliated corporation shall be deemed to have requested*
37 *relief in any case in which the taxpayer filed a*
38 *water's-edge contract with a timely filed combined*
39 *return and timely paid all taxes and other required*

1 *amounts shown on the return consistent with the*
2 *water's-edge election.*

3 SEC. 3. The Legislature finds that an important
4 public necessity of ensuring fair and consistent
5 administration of the Revenue and Taxation Code exists
6 for this act. It is the intent of the Legislature in enacting
7 this act that a taxpayer's water's-edge election should be
8 validated where any noncompliance is not due to the act
9 or omission of the taxpayer, but rather to the act or
10 omission of another entity.

11 ~~SEC. 3. Notwithstanding Section 9 of Chapter 490 of~~
12 ~~the Statutes of 1995, the provisions of subparagraph (B)~~
13 ~~of paragraph (3) of subdivision (d) of Section 1 of this act~~
14 ~~shall apply only with respect to a taxpayer or affiliated~~
15 ~~corporation that fully complies with the requirements of~~
16 ~~Section 18405 of the Revenue and Taxation Code on or~~
17 ~~before December 31, 1997.~~

18 SEC. 4. This act provides for a tax levy within the
19 meaning of Article IV of the Constitution and shall go into
20 immediate effect.

